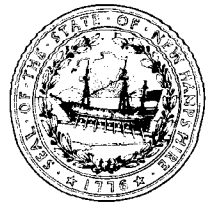




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Charles Smith  
PO Box 431  
Ossipee, NH 03814

Re: Wetlands Bureau File # 2001-1438  
Ryefield Road, Effingham and Ossipee, NH

**ADMINISTRATIVE ORDER**  
**No. WD 06-003**

January 12, 2006

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Charles Smith, pursuant to RSA 482-A:6 and RSA 485-A:22. This Administrative Order is effective immediately upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, New Hampshire.
2. Charles Smith is an individual having a mailing address of PO Box 431, Ossipee, New Hampshire 03814.

**C. STATEMENT OF FACTS AND LAW**

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."

**P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095**

Telephone: (603) 271-2147 • Fax: (603) 271-6588 • TDD Access: Relay NH 1-800-735-2964

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

4. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
5. Env-Ws 415.02(y) defines significantly altering the characteristics of the terrain to include disturbing more than 100,000 square feet of contiguous area.
6. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
7. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.
8. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
9. Mr. Smith is the owner of property located in Ossipee and Effingham New Hampshire, more particularly identified on Town of Ossipee Tax Map 32 as Lots 1 and 2 and Effingham Tax Map 32 as Lots 51 and 52 ("the Property").
10. On November 17, 2005, DES personnel conducted an inspection of the Property in response to a complaint from the Town of Effingham. During the inspection, DES personnel found the following:
  - a. At least 50,000 square feet of wetland had been dredged on the Property;
  - b. Recent alteration of terrain in excess of 100,000 square feet had taken place on the Property; and
  - c. No temporary erosion controls had been installed on the Property.
11. DES has no record of any application for, or issuance of, any permits to Mr. Smith for any activities regulated under RSA 482-A or RSA 485-A.
12. Research by DES personnel, including review of National Wetland Inventory maps, indicates that there are wetland areas on the Property.
13. On December 8, 2005, DES received correspondence from Eric Mitchell & Associates, Inc. stating that they had been retained to represent Mr. Smith to act as environmental consultants.

#### **D. DETERMINATION OF VIOLATIONS**

1. Mr. Smith has violated RSA 482-A:3, I, by dredging a minimum of 50,000 square feet of wetlands without obtaining a permit from DES.
2. Mr. Smith has violated RSA 485-A:17 by failing to obtain a permit from DES prior to initiating alteration of terrain activities on the Property.

3. Mr. Smith has violated RSA 485-A:17 and Env-Ws 415.09(i) by failing to install erosion control measures on the Property.

### E. ORDER

Based on the above findings, DES hereby orders Mr. Smith as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.
2. **By February 24, 2006**, submit to DES for approval a restoration plan for wetlands located on the Property. The restoration plan shall be prepared by a certified wetland scientist and stamped by a licensed surveyor, and include the following:
  - a. Existing conditions and land topography, with dimensions drawn to scale, including the delineated footprint of all wetlands, streams, ponds, and jurisdictional runoffs on the Property. The delineations shall be prepared in accordance with Section F of the *Army Corps of Engineers Wetlands Delineation Manual* ("Section F");
  - b. The delineated footprint of all disturbed areas in accordance with Section F;
  - c. The area, in square feet, of disturbance on the Property;
  - d. A plan for reestablishing wetlands to their original footprint along with proposed conditions after reestablishing the jurisdictional areas;
  - e. A detailed proposed means of sediment and erosion control (silt fence, haybales, matings, etc.);
  - f. A proposed schedule, restoration, and construction sequence listing equipment and methods for accomplishing restoration as well as an anticipated restoration compliance date;
  - g. A detailed proposed planting plan for the reestablishment, stabilization, and re-vegetation of the restoration areas; and
  - h. By **September 1, 2006**, submit an initial monitoring report to DES documenting restoration activities, including the survival rate of all vegetation planted during the restoration project.
3. Retain a certified wetland scientist to supervise the implementation of the restoration and to submit the restoration progress reports prepared in accordance with Item E.2 above.
4. Implement the restoration plan proposed in accordance with Item E.2, above only after receiving written approval, and as conditioned, by DES.

5. **By February 24, 2006**, submit to DES an application for a Site Specific permit for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, in accordance with Env-Ws 415.05.

6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Linda Magoon, Compliance Specialist  
DES Water Division  
29 Hazen Drive - P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
e-mail: [lmagoon@des.state.nh.us](mailto:lmagoon@des.state.nh.us)

#### **F. APPEAL**

Any person aggrieved by determinations D.1 of this Order may request that DES reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Any person aggrieved by determinations D.2 and D.3 of this Order may appeal to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Filing an appeal or request for reconsideration of the Order will not automatically relieve Mr. Smith of his obligation to comply with the Order.

#### **G. OTHER PROVISIONS**

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. Smith remains obligated to comply with all applicable requirements. DES will continue to monitor Mr. Smith's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.

**COPY**

Harry T. Stewart, P.E., Director  
Water Division

**COPY**

Michael P. Nolin, Commissioner  
Department of Environmental Services

*CERTIFIED MAIL # 7004 0750 0001 2491 8963*

cc: Gretchen R. Hamel, Legal Unit Administrator  
James P. Martin, Public Information Officer, DES  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Carroll County Registry of Deeds  
Linda Magoon, DES Wetlands Bureau  
Janis Connor, Department of Agriculture  
Mike Lambert, Eric Mitchell & Associates, Inc.  
Town of Effingham Board of Selectmen and Conservation Commission  
Town of Ossipee Board of Selectmen and Conservation Commission